IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.653 OF 2004.

Union of India
represented through,
The Genera, Manager,
Central Railway, Bombay V.T. : Appellants.

versus

Ratanlal Bansilal Raka & ors. : Respondents.

Mr.T.J.Pandian for the appellants.

CORAM : D.G.DESHPANDE,J.

DATED : 20th September 2005.

ORAL ORDER

1. Heard the advocate for the appellants. The tribunal has awarded the compensation to the respondents. It is in respect of short delivery out of 850 packets of onions which were entrusted to the railway. They reached the destination within the stipulated time. At that time there

was short delivery of 33 and 25 packets of onions respectively. Therefore, a claim petition was filed. That was allowed by the tribunal and hence this appeal by the appellant - Union of India.

2. The counsel for the appellant tried to contend that the goods were given to the railway at owner's risk. He relied upon Section 65(2) of the Railways Act and the Proviso thereto. He contended that the quantity of the packets entrusted to the railways was not proved by the respondents/claimants.

3. This submission cannot be accepted firstly because the Railway Receipt mentions the quantity of specific number of packets entrusted to the railways for delivery. Apart from that, the claimants/respondents had filed an affidavit as evidence and has stated therein about the specific number of bags delivered. What the Proviso to Section 65(2) requires is the burden on the consignor regarding number of package. That burden has been discharged by the respondents.

4. The counsel for the appellant tried to contend that if the goods are carried at owner's risk, the railways are not at all liable. That is not what is provided by Section 97. What is provided is, a railway administration shall not be responsible unless the proof of loss, destruction or damage is given. That proof is already there on record. There is no merit in this appeal. The appeal is dismissed.

[D.G.DESHPANDE,J]